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Canadian American Oil Co., d/b/a Divisidero Touchless Car Wash and Sanitary Truck Drivers and Helpers, Local 350, International Brotherhood of Teamsters. Case 20-CA-26597

May 5, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND BROWNING

Pursuant to a charge filed on March 8, 1995, the General Counsel of the National Labor Relations Board issued a complaint on March 16, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 20-RC-17054. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On April 10, 1995, the General Counsel filed a Motion for Summary Judgment. On April 12, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 17, 1995, the Union joined in the General Counsel's motion and requested an expedited decision. On April 26, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

317 NLRB No. 54

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Canadian American Oil Co., d/b/a Divisidero Touchless Car Wash, a corporation, with an office and place of business in San Francisco, California, has been engaged in the operation of a retail car wash. During the 12-month period ending July 31, 1994, the Respondent, in conducting its business operations, received gross revenues in excess of \$500,000 and purchased and received at its San Francisco, California facility goods valued in excess of \$5000 directly from points outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.¹

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held September 7, 1994, the Union was certified on February 17, 1995, as the collective-bargaining representative of the employees in the following appropriate unit:

All car wash employees employed by the Respondent at its 444 Divisidero Street, San Francisco, California facility, including service writers, vacuumers, drivers, prep men, detailers, and cashiers; excluding gas station employees, office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since February 28, 1995, the Union has requested the Respondent to bargain and, since March 6, 1995, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

¹The Respondent's answer states that the Respondent is without knowledge or information sufficient to form a belief as to whether the Union is a 2(5) labor organization. However, by entering into a Stipulated Election Agreement, the Respondent effectively agreed that the Union is a labor organization. At no time during the underlying representation proceeding did the Respondent raise a question concerning the Union's status as a 2(5) labor organization. Its failure to raise this issue in the underlying representation proceeding precludes the Respondent from litigating the matter in this proceeding. *Biewer Wisconsin Sawmill*, 306 NLRB 732 fn. 1 (1992).

CONCLUSION OF LAW

By refusing on and after March 6, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Canadian American Oil Co., d/b/a Divisidero Touchless Car Wash, San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Sanitary Truck Drivers and Helpers, Local 350, International Brotherhood of Teamsters as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All car wash employees employed by the Respondent at its 444 Divisidero Street, San Francisco, California facility, including service writers, vacuumers, drivers, prep men, detailers, and cashiers; excluding gas station employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Post at its facility in San Francisco, California, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. May 5, 1995

William B. Gould IV, Chairman

James M. Stephens, Member

Margaret A. Browning, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Sanitary Truck Drivers and Helpers, Local 350, International Brotherhood of Teamsters as the exclusive representative of the employees in the bargaining unit:

All car wash employees employed by us at our 444 Divisidero Street, San Francisco, California facility, including service writers, vacuumers, drivers, prep men, detailers, and cashiers; excluding gas station employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on

terms and conditions of employment for our employees in the bargaining unit.

CANADIAN AMERICAN OIL CO., D/B/A
DIVISIDERO TOUCHLESS CAR WASH